

#### § 320.4

petition or application and included in a Service administrative file. Applicants should indicate that they wish to rely on such documents and identify the administrative file(s) by name and alien number. The Service will only request the required documentation again if necessary.

#### § 320.4 Who must appear for an interview on the application for citizenship?

All applicants (and U.S. citizen parent(s) if application filed on behalf of a minor biological or adopted child) must appear for examination unless such examination is waived under the guidelines expressed in § 341.2 of this chapter.

#### § 320.5 What happens if the application is approved or denied by the Service?

(a) *Approval of application.* If the application for the certificate of citizenship is granted, after the applicant takes the oath of allegiance prescribed in 8 CFR part 337, unless the oath is waived, the Service will issue a certificate of citizenship.

(b) *Denial of application.* If the decision of the district director is to deny the application for a certificate of citizenship under this section, the applicant shall be furnished with the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). An applicant may file an appeal on Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), with the required fee prescribed in § 103.7(b)(1) of this chapter, in accordance with the instructions therein and with any supporting documentation addressing the reasons for denial. To be timely, an appeal must be filed within 30 days of service of the decision. After an application for a certificate of citizenship has been denied and the time for appeal has expired, a second application submitted by the same individual shall be rejected and the applicant will be instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion shall be accompanied by the rejected application and the fee specified in 8 CFR 103.7. A decision shall be issued

#### 8 CFR Ch. I (1–1–06 Edition)

with notification of appeal rights in all certificate of citizenship cases, including any case denied due to the applicant's failure to prosecute the application.

### PART 322—CHILD BORN OUTSIDE THE UNITED STATES; REQUIREMENTS FOR APPLICATION FOR CERTIFICATE OF CITIZENSHIP

Sec.

322.1 What are the definitions used in this part?

322.2 Who is eligible for citizenship?

322.3 How, where, and what forms and other documents should the United States citizen parent(s) file?

322.4 Who must appear for an interview on the application for citizenship?

322.5 What happens if the application is approved or denied by the Service?

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SOURCE: 66 FR 32144, June 13, 2001, unless otherwise noted.

#### § 322.1 What are the definitions used in this part?

As used in this part the term:

*Adopted* means adopted pursuant to a full, final and complete adoption. In the case of an orphan adoption, if a foreign adoption was not full and final, was defective, or the unmarried U.S. citizen parent or U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings, an orphan is not considered to have been adopted and must be re-adopted in the United States or satisfy the requirements of section 101(b)(1)(E) of the Act.

*Adopted child* means a person who has been adopted as defined above and who meets the requirements of section 101(b)(1)(E) or (F) of the Act.

*Child* means a person who meets the requirements of section 101(c)(1) of the Act.

*Lawful admission* shall have the same meaning as provided in section 101(a)(13) of the Act.

*Joint custody*, in the case of a child of divorced or legally separated parents, means the award of equal responsibility for and authority over the care, education, religion, medical treatment

and general welfare of a child to both parents by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence.

*Legal custody* refers to the responsibility for and authority over a child.

(1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

(i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),

(ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or

(iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

(2) In the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree. In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

#### **§ 322.2 Who is eligible for citizenship?**

(a) *General.* A child will be eligible for citizenship under section 322 of the Act, if the following conditions have been fulfilled:

(1) The child has at least one United States citizen parent (by birth or naturalization);

(2) The United States citizen parent has been physically present in the United States or its outlying posses-

sions for at least 5 years, at least 2 of which were after the age of 14, or the United States citizen parent has a United States citizen parent who has been physically present in the United States or its outlying possessions for at least 5 years, at least 2 of which were after the age of 14;

(3) The child currently is under 18 years of age;

(4) The child currently is residing outside the United States in the legal and physical custody of the United States citizen parent; and

(5) The child is temporarily present in the United States pursuant to a lawful admission and is maintaining such lawful status in the United States.

(b) *Additional requirements if child is adopted.* If an adopted child, all of the requirements in paragraph (a) of this section must be fulfilled and the child must satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act.

#### **§ 322.3 How, where, and what forms and other documents should the United States citizen parent(s) file?**

(a) *Application.* An application for a certificate of citizenship under this section on behalf of a biological child shall be submitted on Form N-600, Application for Certificate of Citizenship, by the U.S. citizen parent(s). An application for a certificate of citizenship under this section on behalf of an adopted child shall be submitted on Form N-643, Application for Certificate of Citizenship in Behalf of An Adopted Child by U.S. citizen adoptive parent(s). The completed application and accompanying supporting documentation may be filed at any stateside district office or suboffice. The application must be filed with the filing fee required in § 103.7(b)(1) of this chapter. The U.S. citizen parent should include a request with the N-600 or N-643, noting preferred interview dates, and should allow sufficient time (at least ninety days) to enable the Service office to preliminarily adjudicate the application, schedule the interview, and send the appointment notice to the foreign address.

(b) *Evidence.* (1) An applicant under this section shall establish eligibility under § 322.2. In addition to the forms